

ATTACHMENT

**2.5.B. NYSDOS; DEPARTMENT OF AGRICULTURE AND
MARKETS; NOTICE OF INTENT REGULATIONS
(Adopted February 28, 1996); 1 NYCRR Part 371**

Part 371 is repealed and a new part 371 is adopted to read as follows:

PART 371

NOTICE OF INTENT

(Statutory authority: Agriculture and
Markets Law, Sections 16, 18[6], 305[4], 307)

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371.1 Introduction	371.7 Form and content of final notice of intent
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Section 371.1 Introduction. This Part establishes the requirements and forms to be used to notify the commissioner and the county agricultural and farmland protection board of an intent to undertake an action within an agricultural district.

371.2 Definitions. For the purpose of this Part:

(a) Acquisition means the act of vesting of title or right to land or interest in land.

(b) Action means: (1) the exercise of the power of eminent domain to effect an acquisition, as that term is defined by Eminent Domain Procedure Law (EDPL) section 103(A), through the filing of an acquisition map pursuant to EDPL section 402, by a State agency, public benefit corporation or local government of:

(i) land in excess of one acre from any one actively operated farm located within an agricultural district; or

(ii) land in excess of 10 acres, located within an agricultural district; or

(2) the acquisition of land or any interest therein by a State agency, public benefit corporation or local government:

(i) in excess of one acre from any one actively operated farm located within an agricultural district; or

(ii) in excess of 10 acres, located within an agricultural district; or

(3) the advance of any amount of funds in any form including, but not limited to, a grant, loan or interest subsidy by a State agency, public benefit corporation or local government for the construction, within an agricultural district, of dwellings, commercial or industrial facilities, or water or sewer facilities to serve non-farm structures; or

(4) the construction by a State agency, public benefit corporation or local government, within an agricultural district, of dwellings, commercial or industrial facilities, or water or sewer facilities to serve non-farm structures.

(c) Actively operated means operated at any time during the preceding twelve months.

(d) Advance means any act by which a State agency, local government or public benefit corporation makes a transfer of funds or a binding commitment to transfer funds.

(e) Agricultural district means a district established pursuant to section 303 or section 304 of the Agriculture and Markets Law.

(f) Agricultural resources means all natural resources on a farm, including but not limited to, soil and water resources used in the production of crops, livestock and livestock products.

(g) Agricultural setting means the type of farm enterprises, such as dairy, fruit, vegetable, field crop, livestock, poultry, nursery, horticulture, Christmas tree, greenhouse, or aquaculture; approximate size, in acres; and the diversity of agricultural products produced.

(h) Commercial or industrial facility means any type of facility to be used for:

(i) the sale, rental, provision or distribution of goods, services or commodities, either retail or wholesale; or

(ii) the manufacturing, production, assembly or processing of goods or materials of any kind or nature and shall include, but not be limited to, facilities related thereto for marketing, storage, warehousing, receiving and distributing, office operations, research and development and other types of support functions; or

(iii) the disposal of any type of waste.

This term does not include facilities used primarily for the on-farm production, preparation and marketing of crops, livestock and livestock products.

(i) Commissioner means the Commissioner of Agriculture and Markets of the State of New York.

(j) Department means the New York State Department of Agriculture and Markets.

(k) EDPL hearing means a hearing held pursuant to EDPL section 201.

(l) Farm means a farm operation as defined in section 301(11) of the Agriculture and Markets Law.

(m) Farm enterprise means a farm business engaged in the production for sale of crops, livestock or livestock products, as defined in section 301(2) of the Agriculture and Markets Law.

(n) Interest in land means any right, title or estate in land, and includes, but is not limited to, fee simple, options, leaseholds, easements and rights-of-way.

371.3 Preliminary and final notices of intent. (1) Preliminary notice of intent. State agencies, public benefit corporations and local governments shall file a preliminary notice of intent, in the form prescribed by this Part, with the commissioner and the county agricultural and farmland protection board as early as possible in the development of a proposal of an action, but in no event later than the date of any determination as to whether an environmental impact statement need be prepared for the action pursuant to Article 8 of the Environmental Conservation Law.

(2) Final notice of intent. State agencies, public benefit corporations and local governments shall file a final notice of intent, in the form prescribed by this Part, with the commissioner and the county agricultural and farmland protection board at least 65 days prior to undertaking an action within an agricultural district.

371.4 Party to file notices of intent. Preliminary and final notices of intent shall be filed with the commissioner and the county agricultural and farmland protection board by the State agency, public benefit corporation or local government which plans to undertake an action within an agricultural district. In the case where one State agency, public benefit corporation or local government advances funds to another State agency, public benefit corporation or local government to undertake an action, the latter agency, corporation or government may file such notices on behalf of all the involved agencies with the commissioner and the county agricultural and farmland protection board.

371.5 Conditions under which filing is required. Preliminary and final notices of intent shall be filed with the commissioner and the county agricultural and farmland protection board as provided in section 305(4)(b) and (c) of the Agriculture and Markets Law. In cases where an action involves a series of separate and discrete stages which are to be implemented over a period of years, individual notices shall be filed with the commissioner and the county agricultural and farmland protection board for each stage of the action which requires the acquisition of land or any interest therein, construction or the advance of public funds. The advance of public funds for the purpose of determining whether an action should be undertaken, such as for the construction of water quality monitoring wells, shall not require the filing of a notice, provided the advance of funds does not involve the acquisition of land or any interest therein in excess of one acre from any one actively operated farm located within an agricultural district or in excess of ten acres within the agricultural district and provided such activities do not commit the agency, corporation or local government to commence or engage in such action.

371.6 Form and content of preliminary notice of intent. The preliminary notice of intent required by section 305(4)(b) of the Agriculture and Markets Law shall be in the following form and contain the following information:

(a) A statement at the top of the first page with the following language:

PRELIMINARY NOTICE OF INTENT TO UNDERTAKE AN ACTION
WITHIN AN AGRICULTURAL DISTRICT

(b) The name and address of the State agency, public benefit corporation or local government proposing to undertake the action.

(c) The identity, by county and number, of the agricultural district or districts affected by the proposed action.

(d) The identity of the municipality or municipalities within which the project, which is the subject of the action, will occur.

(e) A brief description of the proposed action, including: its purpose, the type of action proposed (e.g., the acquisition of land or any interest therein by eminent domain or purchase; construction, or the advance of public funds for construction); and the number of acres of land, or any interest therein, which is expected to be acquired from an actively operated farm or farms within an agricultural district or a parcel or parcels of land within an agricultural district.

(f) A brief narrative of the agricultural setting and the location of the project site, if known.

(g) A summary of any anticipated adverse impacts on farm operations and agricultural resources which are located within the district.

(h) The approximate date of commencement of the proposed action.

(i) The name, title, address and telephone number of the individual who is authorized to respond to department inquiries concerning the preliminary notice; and

(j) The signature of the authorized individual, verifying that the information contained in the preliminary notice is truthful and accurate to the best of his or her knowledge, and date signed.

371.7 Form and content of final notice of intent. The final notice of intent required by section 305(4)(c) of the Agriculture and Markets Law shall be in the following form and contain the following information:

(a) A statement at the top of the first page with the following language:

FINAL NOTICE OF INTENT TO UNDERTAKE AN ACTION
WITHIN AN AGRICULTURAL DISTRICT

(b) The name and address of the State agency, public benefit corporation or local government proposing to undertake the action.

(c) The identity, by county and number, of the agricultural district or districts affected by the proposed action.

(d) The total number of acres in the agricultural district which will be affected by the proposed action.

(e) The location of the proposed action, including the county, town, city, village or other municipality involved.

(f) The name, address, telephone numbers and tax map numbers for the owners of all farms which will be affected by the proposed action.

(g) A detailed agricultural impact statement setting forth the following:

(1) (i) A detailed description of the proposed action.

(ii) A detailed description of the agricultural setting including:

(a) a tax map, or other map which sets forth the tax map numbers of all affected landowners as identified in section 371.7(f), identifying: the final proposed siting of the project, which is the subject of the action; and the surrounding land use, including agricultural land use by type of production;

(b) the total number of farms within the agricultural district which will be affected by the proposed action; and

(c) the total number of acres of land in farms within the agricultural district which will be affected by the proposed action.

(2) An assessment of the anticipated agricultural impact of the proposed action including short-term and long-term effects. Short-term effects include, but are not limited to, construction effects, such as temporary loss of land used in agricultural production, disruption of ongoing farm practices and the economic impact of these effects. Long-term effects include, but are not limited to, permanent loss or severance of land used in agricultural production, changes to infrastructure, the extent to which the proposed action will cause or encourage non-farm development and the economic impact of these effects. The assessment shall include a brief narrative of concerns, if any, expressed by the farm landowners directly affected by the proposed action.

(3) Any adverse agricultural effects, including short-term and long-term effects, which cannot be avoided should the proposed action be implemented.

(4) The reason(s) why the preferred alternative, route, and/or site was selected.

(5) Any irreversible and irretrievable commitments of agricultural resources which would result from the proposed action if it is implemented.

(6) Any mitigation measures proposed to minimize the adverse impact of the proposed action on the continuing viability of a farm enterprise or enterprises within the district (e.g., use of construction techniques which would avoid soil compaction, loss of topsoil, disturbance of the soil profile, and damage to farm drainage systems and conservation structures; restoration of land used in agricultural production which is affected by construction activities to its pre-construction condition to the maximum extent practicable; siting a facility in such a manner as to avoid or minimize adverse effects on farm operations; or the imposition of permit conditions or other binding restrictions that would avoid or minimize the potential for non-farm growth inducement within the agricultural district, such as the imposition of service lateral restrictions for water or sewer lines.)

(7) Any aspects of the proposed action which would encourage non-farm development. Include, where applicable and appropriate, a description of any roadways, water or sewer lines, gas

lines, or commercial or industrial facilities which are proposed. If the proposed action may encourage non-farm development, also provide the following information:

(a) Local zoning restrictions which apply to the area.

(b) The total number of applications for subdivisions of five or more lots submitted to the local government(s) in the locality where the action is proposed in the two years preceding the filing of the final notice of intent. Include the total number of lots involved and, for applications for subdivisions of 10 or more lots, provide a brief description of the project, including location and proximity to the proposed action.

(8) The anticipated date of commencement of the proposed action.

(9) The name, title, address and telephone number of the individual authorized to respond to department inquiries concerning the final notice; and

(10) The signature of the authorized individual, verifying that the information contained in the final notice is truthful and accurate to the best of his or her knowledge, and date signed.

(h) If the action involves the advance of funds of any kind within an agricultural district for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities to serve non-farm structures, provide, in addition to the information required by subdivisions (a) through (g) of this section, the following additional information:

(1) the source of the funds;

(2) the name, address and telephone number of the recipient(s) of the funds.

The party proposing the action shall file an original and four complete copies of the final notice of intent, including all maps, appendices and other information, with the commissioner. If the commissioner notifies the party proposing the action that the final notice of intent is incomplete pursuant to section 305(4)(c), and the party files additional information or a revised final notice of intent with the commissioner, the party shall also file an original and four complete copies of the information or revised final notice of intent with the commissioner.

The party proposing the action shall also file a complete copy of the final notice of intent, including all maps, appendices and other information, with the county agricultural and farmland protection board. If additional information or a revised final notice of intent is filed with the commissioner, the party shall also file a complete copy of the information or revised final notice of intent with the board.

371.8 Waiver. (a) The filing of preliminary and final notices of intent shall not be required for acquisitions of land or any interest therein, nor for any subsequent construction or advance of funds for construction subject to notice requirements by a project sponsor on the land previously acquired where the owner(s) of such land sign(s) a document waiving the notice requirements contained in paragraphs (b) and (c) of section 305(4) of the Agriculture and Markets Law and provides a copy to the commissioner. All waivers shall be executed prior to undertaking the action and shall be provided to the commissioner as soon as possible thereafter. Waivers shall contain at least the following information:

Waiver

(I, we, the corporation) am/are/is the owner(s) of _____ acres of active farmland and/or _____ acres of non-farmland, situated at _____ (tax parcel ID #s, description in deed) which is proposed to be acquired by _____ in _____ County Agricultural District # _____. Pursuant to Section 305(4)(d) of the New York State Agriculture and Markets Law, (I, we, the corporation) hereby waive(s) (my, our, its) right(s) to require _____ (the party proposing the acquisition) to file with the Commissioner of Agriculture and Markets and the

County Agricultural and Farmland Protection Board a Preliminary and Final Notice of Intent in accordance with paragraphs (b) and (c) of section 305(4) of the Agriculture and Markets Law.

[Name, address and telephone
number - project sponsor]

(signature)

[Name, address and telephone
number - landowner(s)]

Date

[Individual Acknowledgment]

State of _____}

ss:

County of _____}

On the ____ day of _____, 19____, before me personally came _____ to me known, and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that he/she executed the same.

[Signature, with name printed
underneath]

Notary Public, No. _____
_____ County.

[Seal]

[Corporate Acknowledgment]

State of _____}

ss:

County of _____}

On the ____ day of _____ in the year _____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he/she resides at _____; that he/she is the _____ [president or other officer or director] of the _____ [name of corporation], the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he/she signed his/her name thereto by like order.

[Signature, with name printed
underneath]

Notary Public, No. _____
_____ County.

[Seal]

(b) The execution and provision to the commissioner of a waiver or waivers for only a portion of the lands involved in a proposed action shall not eliminate the obligation of the State agency,

public benefit corporation or local government proposing the action to file a preliminary and final notice of intent for those lands not covered by a waiver or waivers.

(c) The execution and provision to the commissioner of a waiver of the notice requirements in section 305(4) of the Agriculture and Markets Law for the acquisition of land or interest in land for any phase of a multiple stage action, shall not eliminate the obligation of the State agency, public benefit corporation or local government to file preliminary and final notices of intent for the acquisition of land or interest in land for those stages for which a waiver of the notice requirements has not been obtained.

(d) The execution and provision of a waiver or waivers by owners of land involved in a proposed action shall not eliminate the obligation of the State agency, public benefit corporation or local government proposing the action to use all practicable means in undertaking an action to realize the policy and goals set forth in Article 25-AA of the Agriculture and Markets Law, and to act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse impacts on agriculture in order to sustain a viable farm enterprise or enterprises within the district, as required by section 305(4)(a) of the Agriculture and Markets Law.

371.9 Exemption. (a) The commissioner may grant an exemption from any of the provisions of this Part which are not otherwise required by section 305(4) of the Agriculture and Markets Law.

(b) Standard. The exemption may be granted if the commissioner determines that the exemption from the specific provision or provisions of this Part will not significantly interfere with the commissioner's duty to review the proposed action and to make an initial determination whether such action would have an unreasonably adverse effect on the continuing viability of a farm enterprise or enterprises within an agricultural district, State environmental plans, policies and objectives, or State comprehensive plans, policies and objectives.

371.10 Alternatives. (a) Pursuant to section 305(4)(f) of the Agriculture and Markets Law, if the commissioner determines that a proposed action would have an unreasonably adverse effect on the continuing viability of a farm enterprise or enterprises within the district, state environmental plans, policies and objectives, or state comprehensive plans, policies and objectives, he or she may issue an order as authorized by that paragraph and review the proposed action to determine whether any reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact on agriculture in order to sustain a viable farm enterprise or enterprises within the district.

(b) If the commissioner concludes that a reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact of the proposed action, he or she shall propose to the agency, corporation or government proposing the action that such alternative or alternatives be accepted. If the agency, corporation or government accepts the commissioner's proposal, then it shall communicate its acceptance to the commissioner in writing and the requirements of the notice of intent filing shall be deemed fulfilled. If the agency, corporation or government rejects the commissioner's proposal, then it shall provide the commissioner, in writing, with reasons for rejecting such proposal and a detailed comparison between its proposed action and the commissioner's alternative or alternatives. The written communication required by this paragraph shall be signed by the individual or individuals authorized to act on behalf of the agency, corporation or government.

371.11 Certification. (a) Pursuant to section 305(4)(g) of the Agriculture and Markets Law, the agency, corporation or government shall certify to the commissioner that it has made an explicit

finding that the requirements of section 305(4) have been met, and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse agricultural impacts revealed in the notice of intent process will be minimized or avoided.

(b) The certification shall be provided by the agency, corporation or government and shall be signed by the individual or individuals authorized to act on behalf of the agency, corporation or government. It shall set forth the reasons in support of the finding by the agency, corporation or government (e.g., needs and benefits, assessment of anticipated agricultural impacts, assessment of alternatives, proposed mitigation measures—including adoption of construction standards and/or guidelines recommended by the department, and discussion of existing laws, programs and policies which help sustain viable farm enterprises within the agricultural district).